

AGREEMENT

04-120

BETWEEN

THE GOVERNMENT OF THE UNITED STATES OF AMERICA

AND

THE GOVERNMENT OF CANADA

FOR COOPERATION IN SCIENCE AND TECHNOLOGY

FOR CRITICAL INFRASTRUCTURE PROTECTION AND

BORDER SECURITY

THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF CANADA, hereinafter referred to as the "Parties":

HAVING REGARD to the provisions of The Smart Border Declaration signed in Ottawa, Canada, on December 12, 2001,

STRESSING that physical and cyber-based critical infrastructures and border security, both governmental and private, are essential to the operations and security of our respective economies and governments,

NOTING that our economies are increasingly interdependent, and that infrastructure protection and border security are of paramount concern to our respective governments,

SHARING the goal of ensuring that our critical infrastructures and border security are trustworthy and resilient, in order to assure continuity and viability, through a vigorous program of science and technology including research, development, testing, and evaluation,

BEING aware of research in both countries in chemical, biological, radiological, nuclear and explosive countermeasures and in other areas that could enhance critical infrastructure protection and border security,

RECOGNIZING that, just as critical infrastructures and border security are inherently international, so too is the global science and technology base that will generate protective solutions to current and future vulnerabilities,

COGNIZANT of the effectiveness and utility of existing bilateral agreements in these areas that remain in effect,

AFFIRMING our common interest in enhancing the longstanding collaborative efforts of our respective agencies, private sector and governmental organizations, and academic institutions in generating scientific and technological solutions to counter threats, reduce vulnerabilities and respond to incidents and emergencies in those areas having the potential for causing significant security, economic, and/or social impacts,

DESIRING to set forth a vehicle for the conduct of cooperative scientific and technological research and development in the fields of critical infrastructure protection and border security,

AGREE to the following:

ARTICLE I

DEFINITIONS

For purposes of the Agreement Between the Government of the United States of America and the Government of Canada for Cooperation in Science and Technology for Critical Infrastructure Protection and Border Security (the "Agreement"), the Parties have adopted the following definitions of terms used in this Agreement:

Border Security	Assurance of the safe flow of goods and people between the United States and Canada and entering into the common air and sea perimeter of the two countries, including activities such as countermeasures ranging from prevention to mitigation and response.
Cooperative Activity	Scientific and technological research, including joint research programs, or other activities, that is implemented pursuant to this Agreement with the approval of the Parties and that involves collaboration between the Parties or Participants from both countries.
Critical Infrastructure	Governmental and/or private activities or sectors that are identified by each Party in its laws, executive orders, or policies as "Critical Infrastructure".
Equipment and Material	Any material, equipment, reagents, end item, subsystem, component or test equipment acquired or provided for use in research, development, testing, and evaluation or other cooperative efforts initiated under this Agreement.
Intellectual Property	"Intellectual Property" as defined in Article 2 of the Convention Establishing the World Intellectual Property Organization, done at Stockholm, July 14, 1967.
Participant	Any non-federal government person or entity, including, <i>inter alia</i> , a private sector organization, academic institution, state, province, or other levels of government, or subsidiary thereof, that conducts activities with the approval of at least one of the Parties and is involved in Cooperative Activity.
Project Authorization	The instrument outlining the scope of Cooperative Activity in which the Participant is authorized to engage under this Agreement and the terms and conditions for such activity.

Research, Development,
Testing, and Evaluation

Programs and activities, including basic research, applied research, advanced technology development, and proof of principle, and validation, of the Parties and/or Participants that seek to identify, develop and facilitate technological solutions and management tools and techniques to address existing and emerging threats to, and vulnerabilities in, the Critical Infrastructure and Border Security of each Party.

ARTICLE II

OBJECTIVE

The objective of this Agreement is to encourage, develop, and facilitate bilateral science and technology for Critical Infrastructure protection and Border Security, in accordance with the provisions herein. The provisions of this Agreement are designed to facilitate Cooperative Activity of the Parties and Participants.

ARTICLE III

BASIS FOR COOPERATIVE ACTIVITY

1. When the Parties implement Cooperative Activity under this Agreement, they shall facilitate Cooperative Activity, as they may agree, on the basis of the following:
 - a. Reciprocal opportunities to engage in Cooperative Activity, with shared responsibilities and contributions, commensurate with the Parties' or the Participants' respective resources;
 - b. Comparable access to government-sponsored or government-supported programs and facilities for visiting researchers and technical experts, and comparable access to and exchange of, information and Equipment and Material;
 - c. Timely exchange of information and Equipment and Material, which may affect Cooperative Activity, and dissemination of information and Equipment and Material, consistent with applicable national laws and regulations.
2. Prior to undertaking Cooperative Activity under this Agreement, the Parties through their departments or their agencies shall agree in writing upon the (i) scope of Cooperative Activity, (ii) its duration, (iii) the manner in which it will be funded, (iv) specific details of any transfer of Equipment and Material and the identity of personnel and/or organizations, if any, to be committed to Cooperative Activity, (v) provisions for terminating Participant involvement, (vi) dispute resolution processes, and (vii) whether the use of classified information will be required. This description of the scope of Cooperative Activity may include technical annexes, as necessary, with an appropriate level of detail.

ARTICLE IV

AREAS OF COOPERATIVE ACTIVITY

1. The Parties shall facilitate Cooperative Activity in areas they agree upon with regard to Critical Infrastructure protection and Border Security. Areas of Cooperative Activity include, but are not limited to:
 - a. Threat, vulnerability and risk assessments;
 - b. Interdependency analyses;
 - c. System protection and information assurance;
 - d. Detection and monitoring;
 - e. Recovery and reconstitution of damaged or compromised systems;
 - f. Education, training, and exchange of scientific and technical personnel, Equipment and Material in science and technology areas including Research, Development, Testing, and Evaluation;
 - g. Emergency management (including emergency preparedness, response and consequence management);
 - h. Security best practices, standards and guidelines;
 - i. Security of automated infrastructure control systems; and
 - j. Research, Development, Testing, and Evaluation for Critical Infrastructure protection and Border Security countermeasures.
2. Nothing in paragraph 1 shall preclude the Parties from facilitating science and technology in other areas of Critical Infrastructure protection and Border Security.

ARTICLE V

FORMS OF COOPERATIVE ACTIVITY

1. The Parties shall encourage, *inter alia*, the following Cooperative Activity:
 - a. Coordinated research projects and joint research projects;
 - b. Joint task forces;
 - c. Joint studies, projects, and scientific or technical demonstrations;
 - d. Joint organization of scientific seminars, conferences, symposia and workshops;

- e. Training of scientists and technical experts;
 - f. Visits and exchanges of scientists, engineers or other appropriate personnel;
 - g. Exchanges or sharing of scientific and technological information and Equipment and Material;
 - h. Exchange of information on practices, laws, regulations, standards, methods, and programs relevant to cooperation under this Agreement; and
 - i. Joint agreement for the use of laboratory facilities and Equipment and Material, for conducting scientific and technological activities including Research, Development, Testing, and Evaluation.
2. Nothing in paragraph 1 shall preclude the Parties from facilitating other forms of cooperation that they may agree upon.

ARTICLE VI

MANAGEMENT

1. The Parties shall carry out all Cooperative Activity under this Agreement in accordance with their national laws and regulations.
2. Each Party shall designate an Agreement Director, who will be responsible for:
 - a. Promoting Cooperative Activity under this Agreement;
 - b. Monitoring implementation of this Agreement and exercising executive-level oversight;
 - c. Monitoring the overall use and effectiveness of this Agreement;
 - d. Recommending amendments to this Agreement to the Parties;
 - e. Resolving issues brought forth by the Agreement Supervisors; and
 - f. Authorizing involvement by Participants in Cooperative Activity through Project Authorizations pursuant to this Agreement.
3. Within a period of three months following the entry into force of this Agreement, each Party shall provide the other Party in writing the name of its Agreement Director.
4. The Agreement Directors shall meet annually to review implementation of the Agreement.
5. Each Party shall designate an Agreement Supervisor, who will be responsible for:
 - a. Monitoring and evaluating the work conducted under Cooperative Activity and providing guidance and direction as necessary pursuant to Project Authorizations;
 - b. Designating personal points of contact for Cooperative Activity;

- c. Endeavoring to ensure that Cooperative Activity is undertaken efficiently and avoiding duplication of other work where possible; and
 - d. Forwarding, when necessary, issues to the Agreement Directors for resolution.
6. Within a period of three months following the entry into force of this Agreement, each Party shall provide the other Party in writing the name of the Agreement Supervisor.
7. The Agreement Supervisors may meet as they consider necessary to implement this Agreement.

ARTICLE VII

PARTICIPANTS

1. In order for a Participant(s) to engage in Cooperative Activity under this Agreement, that Participant must be duly approved by its sponsor Party. That Party shall ensure that the Participant agrees to conduct such activities in accordance with the terms of this Agreement. The sponsoring Party shall conclude a Project Authorization with the Participant detailing the scope of activities in which the Participant is authorized to engage and the terms and conditions for such activities.
2. Participation in Cooperative Activity by a Participant shall, at the request of the other Party, be subject to the other Party's review and approval.
3. The Parties shall require, as a condition to engaging in Cooperative Activity under this Agreement, each Participant to report to its respective Agreement Supervisor on a periodic basis regarding its performance of Cooperative Activity. The responsible Agreement Supervisor shall determine the frequency and scope of the reporting requirement.
4. In the event that a question arises with respect to a Participant and its activities under this Agreement, the Parties shall consult to consider the Participant's role in Cooperative Activity. If either Party objects to a Participant's continued participation, the Party that authorized the Participant shall terminate the involvement of that Participant in all Cooperative Activity pursuant to this Agreement, in accordance with the terms of the Project Authorization, which shall expressly allow for such a possibility.
5. Nothing in this Agreement precludes a Party from withdrawing a Project Authorization from a Participant.

ARTICLE VIII

CONTRACTING

1. If a Party determines that contracting is necessary to fulfill its responsibilities in support of Cooperative Activity, that Party will contract in accordance with its respective national laws, regulations and procedures.
2. Where a Party contracts to carry out a task in support of Cooperative Activity under this Agreement, it will be solely responsible for its own contracting, and the other Party will not be subject to any liability arising from such contracts without its written consent.

ARTICLE IX

FINANCE

1. Subject to the availability of appropriated funds for Cooperative Activity, each Party shall bear the costs of discharging its responsibilities under this Agreement.
2. Subject to the availability of appropriated funds, the Parties may also agree to share costs for Cooperative Activity.
3. In its Project Authorizations, each Party shall determine how to allocate costs incurred on behalf of the authorizing Party.
4. This Agreement creates no standing financial commitments. Detailed descriptions of the financial provisions for Cooperative Activity, including the total cost of the activity and each Party's or Participant's cost share, will be agreed between the Parties.
5. Each Party shall be responsible for any audit of its activities in support of Cooperative Activity, including the activities of any of its Participants. Each Party's audits shall be in accordance with its own national practices.

ARTICLE X

INTELLECTUAL PROPERTY

1. For purposes of this Agreement, the allocation and protection of Intellectual Property created under this Agreement shall be in accordance with the provisions of the Agreement between the Government of the United States of America and the Government of Canada on the Allocation of Intellectual Property Rights, Interests and Royalties for Intellectual Property Created or Furnished under Certain Scientific and Technological Cooperative Research Activities (with attachment), done at Ottawa, February 4, 1997.
2. The use and distribution of Intellectual Property created under this Agreement shall be subject to the security provisions of Article XIII.

ARTICLE XI

ENTRY OF PERSONNEL AND EQUIPMENT AND MATERIAL

1. With respect to Cooperative Activity under this Agreement, each Party, in accordance with its laws and regulations, and as appropriate, shall facilitate:
 - a. Prompt and efficient entry into and exit from its territory of appropriate Equipment and Material, instrumentation, and project information;
 - b. Prompt and efficient entry into and exit from its territory, and domestic travel and work of, persons participating on behalf of the Parties or Participants in the implementation of this Agreement;

- c. Prompt and efficient access, as appropriate, to relevant geographical areas, information, Equipment and Material, institutions, and persons participating on behalf of the Parties or Participants in the implementation of this Agreement; and
 - d. Mutual logistic support, as agreed.
2. Customs duties, import and export taxes, and similar charges will be administered in accordance with each Party's respective laws and regulations. Insofar as existing laws and regulations permit, each Party will endeavor to ensure that such readily identifiable duties, taxes and similar charges, as well as quantitative or other restrictions on imports and exports, are not imposed in connection with work carried out under this Agreement.
 3. Each Party will use its best efforts to ensure that any customs duties, import and export taxes, and similar charges are administered in a manner favorable to the efficient and economical conduct of the work.

ARTICLE XII

DISPUTE RESOLUTION

1. All questions or disputes between Parties arising under or relating to this Agreement shall be submitted to the Agreement Directors. Such questions and disputes shall be resolved only by consultation between the Parties and will not be referred to a national court, an international tribunal, or to any other person or entity for resolution.
2. Each Party shall ensure that its Project Authorizations address the means to resolve any disputes between the Party and its Participants.

ARTICLE XIII

SECURITY

1. Cooperative Activity undertaken pursuant to this Agreement may include the use and exchange of classified information or equipment, as defined in the Agreement between the Government of the United States of America and the Government of Canada for the Exchange of Classified Information, done at Washington, January 30, 1962, and including the Industrial Security Procedures of 8 February 1985 (collectively, the "General Security Agreement").
2. Each Party shall store, handle, transmit and safeguard all classified information and Equipment and Material provided or generated pursuant to this Agreement in accordance with the General Security Agreement.
3. Each Party shall ensure that access to classified information and Equipment and Material is limited to those persons who possess requisite security clearances and have a specific need for access to the information and/or Equipment and Material.

4. Each Party shall ensure that any exchange of information and Equipment and Material, including classified information and Equipment and Material between Participants or between Parties and Participants shall be in accordance with the relevant laws and regulations of each Party to prevent the unauthorized transfer or retransfer of such information and Equipment and Material provided or produced under this Agreement. Each Party shall ensure that it incorporates this principle into Project Authorizations.

- a. If either Party deems it necessary, detailed provisions for the prevention of unauthorized transfer or retransfer of information and Equipment and Material shall be incorporated into Project Authorizations.
- b. If either Party deems it necessary, additional distribution and access restrictions on information and Equipment and Material shall be incorporated into Project Authorizations.

5. Each Party shall take all lawful steps available to it to ensure that information and Equipment and Material provided or generated pursuant to this Agreement is protected from further disclosure, unless the other Party consents to such disclosure.

ARTICLE XIV

ENTRY INTO FORCE, DURATION, AMENDMENT, AND TERMINATION

1. This Agreement shall enter into force upon signature by both Parties.
2. The Agreement may be amended in writing by mutual consent of the Parties.
3. This Agreement shall remain in force unless terminated in writing by either Party, with such termination taking effect six months from the date of the written notice of termination. This Agreement may also be terminated by the mutual agreement of the Parties.
4. Unless otherwise agreed, termination of this Agreement shall not affect the validity or duration of any Cooperative Activity undertaken previously under it.

IN WITNESS WHEREOF, the undersigned, duly authorized thereto by their respective Governments, have signed this Agreement.

Done at Washington, this first day of June 2004, in duplicate in the English and French languages, each version being equally authentic.

**FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:**

Paula Dolrinsky

**FOR THE GOVERNMENT OF
CANADA:**

M. Kerwin